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his conductor to go to a switch and set it for a certain track and remain there until the front end of his train had passed, but instead, after setting the switch, intestate walked back to his train and got on the front car. Meanwhile the train of another company attempted to pass over the switch and fouled it and collided with intestate's train. Had he remained at the switch as ordered, intestate could have avoided the accident. Held, that intestate was guilty of contributory negligence.

[Ed. Note.—For other cases, see *Master and Servant*, Cent. Dig. §§ 682, 759-775; Dec. Dig. § 243.* 9 Va.-W. Va. Enc. Dig. 713.]

2. Negligence (§ 122*)—Contributory Negligence—Burden of Proof.—The burden of establishing contributory negligence is on defendant, unless it appears by plaintiff's evidence, or can be fairly inferred from all the circumstances.

[Ed. Note.—For other cases, see *Negligence*, Cent. Dig. §§ 221-223, 229-234; Dec. Dig. § 122.* 9 Va.-W. Va. Enc. Dig. 723. 10 Va.-W. Va. Enc. Dig. 406.]

3. Trial (§ 158*)—Demurrer to Evidence—Exclusion of Conflicting Evidence.—On demurrer to plaintiff's evidence, all evidence which fairly conflicts therewith should not be considered, but evidence favorable to defendant may be considered if it does not conflict with plaintiff's evidence.

[Ed. Note.—For other cases, see *Trial*, Cent. Dig. §§ 354-356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 522, 527.]

4. Master and Servant (§ 299*)—Contributory Negligence—Care Required.—A servant engaged in dangerous work must exercise care for his own safety commensurate with such dangers as may be discovered by him by the exercise of ordinary care.

[Ed. Note.—For other cases, see *Master and Servant*, Cent. Dig. §§ 687-700; Dec. Dig. § 229.* 9 Va.-W. Va. Enc. Dig. 702.]

Error to Circuit Court, Alexandria County.

Action by Grove's Administrator against the Washington-Southern Railway Company. Judgment for plaintiff, and defendant brings error. Reversed.

Hill Carter and Francis L. Smith, for plaintiff in error.

Leckie, Fulton & Cox, Jos. T. Sherricr, Lewis H. Muchen and Moncure, Tcbs & Gaines, for defendant in error.

BOARD OF SUP'R'S OF FAUQUIER COUNTY v. SPILMAN et al.

March 14, 1912.

[74 S. E. 151.]

1. Courts (§ 250*)—Jurisdiction—Supreme Court of Appeals—Bond Election Contest.—Under Const. 1902, § 88 (Code 1904, p. ccxxx).

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

prescribing the jurisdiction of the Supreme Court of Appeals, such court has jurisdiction of a contest of an election to determine the issuance of county bonds for road and bridge improvements.

[Ed. Note.—For other cases, see Courts, Cent. Dig. §§ 773-780; Dec. Dig. § 250.* 5 Va.-W. Va. Enc. Dig. 33.]

2. Counties (§ 174*)—Improvement Bonds—Constitutionality of Statute.—Acts 1908, c. 70 (Code Supp. 1910, p. 729), providing for the issuance of county bonds for permanent road and bridge improvements in magisterial districts, is constitutional.

[Ed. Note.—For other cases, see Counties, Cent. Dig. §§ 264, 265; Dec. Dig. § 174.* 10 Va.-W. Va. Enc. Dig. 285.]

3. Estoppel (§ 68*)—Pleadings—Conflicting Positions.—A plea by the defendants in a bond election contest that the election was fairly and honestly conducted estopped them from subsequently assuming a defensive position contradictory thereto, though the plaintiffs had taken such position in their petition and afterwards abandoned it.

[Ed. Note.—For other cases, see Estoppel, Cent. Dig. §§ 165-169; Dec. Dig. § 68.* 5 Va.-W. Va. Enc. Dig. 282.]

Error to Circuit Court, Fauquier County.

Action by E. M. Spilman and others against the Board of Supervisors of Fauquier County. From a judgment for plaintiffs, defendant brings error. Affirmed.

Keith & Richards and *C. E. Nicol*, for plaintiff in error.

R. A. McIntyre and *J. S. Barbour*, for defendants in error.

COLLIER et al. v. SEWARD et al.

March 14, 1912.

[74 S. E. 155.]

1. Equity (§ 422*)—“Final Decree”—What Constitutes—“Interlocutory Decree.”—A decree is interlocutory, and not final, if the further action of the court in the cause, as distinguished from proceedings necessary to execute the decree, is necessary to give completely the relief contemplated by the court.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 932-944, 947-949; Dec. Dig. § 422.* 8 Va.-W. Va. Enc. Dig. 183.]

For other definitions, see Words and Phrases, vol. 3, pp. 2774-2798; vol. 8, p. 7663; vol. 4, pp. 3712-3715; vol. 8, p. 7692.]

2. Equity (§ 181*)—Answer—Time of Filing—“Final Decree.”—The decree, in a suit by judgment creditors to subject to their liens defendants' interest in a trust estate, overruled a demurrer to the supplemental bill, amended and confirmed a commissioner's report of the liens and

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.